IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14442 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? 1 to 5 NO

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DEVIKABEN N. ACHARYA - Petitioner(s)

Versus

MANAGING TRUSTEE,MAYUR KELEVANI TRUST SANCHALIT MAYUR & 3 - Respondent(s)

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Appearance :

MS PARUL JOSHI for MR AB VYAS for Petitioner(s) : 1,
MR ASHISH M DAGLI for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
MR MUKESH PATEL ASSTT GOVERNMENT PLEADER for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 15/11/2005

ORAL JUDGMENT

1. Rule. Learned A.G.P. Mr.Mukesh Patel and learned advocate Mr.A.M.Dagli waive service of Rule.

2. This petition, styled as a petition under Articles 226 and 227 of the Constitution, in reality

challenges the order of the Secondary Education Tribunal, Ahmedabad in Application No.169 of 2003 whereby the application for considering her 32 years of service for the purpose of pension was rejected. Since pursuant to the notice issued in this petition an affidavit-in-reply on behalf of respondent No.3 was filed and the application was fully argued, it is disposed by this judgment at the admission stage.

3. Briefly summarising the facts and law as stated in the impugned judgment and the petition, learned counsel Ms.Parul Joshi, appearing for the petitioner, submitted that the petitioner had resigned from her service as a teacher on 9.6.1968 for the purpose of pursuing B.Ed. course. Since she could not get admission in the academic year 1968-69, she joined the course for B.Ed. in the academic year 1969-70 and thereafter joined the service of another school as an Assistant Teacher on 15.6.1970. Therefore, there was a break of two years and four days in her service during which she was not in the service of any school. These years of break in service were not considered as a qualifying service for the purpose of computing her pension.

4. The petitioner approached the Secondary Education Tribunal after her retirement on 31.5.1995 and stacked her claim to continuous service of 32 years on the basis of Government Resolution dated 6.10.1983 under which the period of break in service occasioned by pursuit of training to be a qualified teacher could be counted as extraordinary leave. The Tribunal, however, took the view that the period of break in service of the

petitioner could not be considered as qualifying service even in light of the said Government Resolution dated 6.10.1983 since the petitioner was not in service of any school during the period of break in service occasioned by her pursuing the B.Ed. course.

5. While arguing on the basis of the same facts, learned counsel Ms.Joshi submitted that resignation from service by the petitioner did not make any difference as far as application of the Government Resolution was concerned and, in any case, for the purpose of grant of selection grade, the break in service was condoned by the authorities concerned. She relied upon the judgment dated 3.2.1982 of this Court (Coram: N.H.Bhatt, J.) in Special Civil Application No.3054 of 1981 wherein, in the facts of that case, it was observed that the pension scheme of the year 1971 had come to be modified by the State from time to time and, as per Annexure-C to that petition, the Government had provided that the period spent by a teacher for any training course approved by the Government as a recruitment qualification for appointment as a teacher in non-government secondary schools along with adjoining vacations either on deputation by management *or by resignation* or termination of service or on leave without pay will not constitute a break in service for the purpose of pension. In the facts of that case, therefore, such period spent on pursuing the course of B.Ed., which was a recruitment qualification for appointment as a teacher in secondary school and even the period of adjoining vacations on both sides, was ordered to be not considered as break for the purpose of pension scheme. As for the period of about one year and four days

of unemployment remaining to be considered, a direction was issued for reconsidering the case by the competent authority for condoning the break.

6. Learned A.G.P. Mr.Mukesh Patel relied upon the affidavit-in-reply of the Education Inspector in D.E.O. Office and submitted that, as per the service book of the petitioner, she completed the qualifying service of 30 years only and the break of about two years in service could not be condoned because she had voluntarily resigned from earlier employment as a teacher in Jyot Kanya Vidyalaya and joined the course of B.Ed. only one year after her resignation. It was contended that, if a teacher tenders resignation before the beginning of B.Ed.course and has joined the service as a teacher afresh and the break was for more than one year, such break could not be condoned. It was also submitted that since the petitioner had not worked at any place for one year and taken the B.Ed.training in the subsequent year, the total period exceeding two years could not be considered for pension purpose.

7. It is evident from the above discussion that there is no dispute about the fact that the petitioner had served as an untrained teacher before she joined the course for the qualification of a trained teacher and the earlier service is counted even for the purpose of grant of selection grade. There is also no dispute about the fact that the pursuit of the B.Ed. course for one year had in fact occasioned the break in service of two years and the petitioner had practically terminated her own service by tendering her resignation. In such

circumstances, applying the ratio of the aforesaid judgment of this Court in Special Civil Application No.3054 of 1981 and the conditions of Government Resolution dated 6.10.1983, it would appear that the Government had adopted and declared the policy of treating as extraordinary leave, for the purpose of pension, the period spent by a teacher on acquiring the prescribed qualification for joining the service as a trained teacher. Therefore, regardless of the break being occasioned by resignation or otherwise, the period actually spent on acquiring the qualification along with adjoining vacations must be treated as extraordinary leave for the purpose of pension. However, the petitioner was not justified in claiming the entire period of break of two years as extraordinary leave since during the entire period of two years, she was not pursuing any course or training as envisaged in the Government Resolution dated 6.10.1983. Therefore, the petition is required to be partly allowed and the impugned judgment of the Tribunal is required to be modified to the extent that the respondents shall be required to consider one year of training period in pursuit of the qualification of B.Ed. as extraordinary leave for the purpose of pension with all the necessary and consequential benefits accruing to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

Sd/-

(D.H.WAGHELA,J.)

(KMG Thilake)